



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 11992658

Date: SEP. 2, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a software engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner asserts that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

A. Substantial Merit and National Importance of the Proposed Endeavor

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. At the time of filing, the Petitioner had been working as a software engineer at [REDACTED] since 2018.⁴ The Director indicated that the Petitioner provided a letter from his employer stating his job responsibilities and concluded that he “failed to show that [his] proposed endeavor has both substantial merit and national importance beyond [REDACTED]” In addition, the Director determined that while the Petitioner submitted another employment letter in response to a request for evidence, he did not offer corroborating evidence that his “specific work has national importance that reaches beyond [REDACTED] and its customers.” On appeal, the Petitioner argues that the Director improperly equated employment with the proposed endeavor.

In the cover letter submitted at the initial filing, the Petitioner asserted that he “proposes to continue his work on computer-aided design” and specifically stated that “[a]s evidence of this, we are submitting a letter confirming his proposed employment (Exhibit 8).” The Director evaluated the Petitioner’s eligibility based on the initial cover letter claim and employment letter content, which the Petitioner precisely referenced as evidence. However, the Petitioner made additional arguments and pointed to other supporting evidence in his cover letter, which the Director did not address in his decision. Specifically, the Petitioner asserted:

[His] work in his area is of great importance because it benefits the expansion of the [REDACTED] the vast global network of interconnected electronic devices. As it encompasses a wide variety of electronic [REDACTED] items that serve a plethora of industries, from healthcare to home design, the general [REDACTED] market is massive. According to Statista, the global IoT market is currently worth over \$1.7 trillion, up from about \$1.15 trillion in 2014. Investment in [his] research in this area is therefore economically sound.

In support of his claims, the Petitioner provided a screenshot from statista.com describing IoT as “a vast network of smart objects which work together in collecting and analyzing data” and indicating

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his current position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

the IoT global market from 2009 – 2019. In addition, the Petitioner submitted advisory opinion letters from [redacted] and [redacted] discussing his prior work and stating that “[the Petitioner] is currently engaged in this arena of research, having already created algorithms that [redacted] techniques and better monitor [redacted] in applications” and “[h]is work has already provided major benefits and continues to improve technologies associated with [IoT]” [redacted], and “[the Petitioner’s] research into improving the [redacted] is of critical global importance” and “experts estimate that the number of devices connected in this [IoT] will reach 30 billion by the year 2020” [redacted]

The Petitioner further claimed:

[His] proposed endeavor also has broad implications for the field and nation. Much of [his] research focuses on improving the [redacted] [redacted], as well as services like the cloud. According to a 2017 report by the [redacted], around 3.5 billion consumer electronic devices are present across 119 million American homes. [redacted] of these devices totals over \$16 billion annually. Furthermore, computers, televisions, and set-top boxes account for about 60% of the total [redacted] [redacted] even though they number only 0.7 billion of devices in American homes.

The Petitioner submitted a document from [redacted] indicating 2017 consumer electronics and [redacted] and pointed to advisory opinion letters from [redacted] and [redacted] who stated that “[h]is work allows the United States to remain a leader in mobile computing technology, cloud computing, and other advanced techniques by enabling them to operate on smaller and smaller devices” [redacted], and his “research . . . provid[es] extremely useful algorithms that have been shown to substantially reduce [redacted] while still performing all necessary tasks” [redacted]

Based on the totality of the evidence in the record, the Petitioner demonstrated that his proposed endeavor falls within the range of science and technology, showing substantial merit. In addition, the Petitioner established that his proposed endeavor has national and global implications within computer science, reflecting national importance. Accordingly, the Petitioner satisfied the first prong of the *Dhanasar* analytical framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the petitioner in order to determine whether he or she is well positioned to advance the proposed endeavor. *Dhanasar*, 26 I&N Dec. at 890. The record includes documentation of his curriculum vitae, academic credentials, published articles, funding sources, and peer review activity. He also offered evidence of articles that cited to his published work, information on a journal that published his work, and letters of support. Although the Director determined that the Petitioner satisfied the second prong, we will withdraw that decision because the record does not reflect that the Petitioner is well positioned to advance his endeavor.

As it relates to the Petitioner’s education, while his graduate degrees from the University [redacted] [redacted] renders him eligible for the underlying EB-2 visa classification, he has not shown that his

academic accomplishments by themselves are sufficient to demonstrate that he is well positioned to advance his proposed endeavor. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and education is merely one factor among many that may contribute to such a finding.

In letters supporting the petition, the references discussed the Petitioner's graduate research.⁵ For example, [REDACTED] stated that the Petitioner's project [REDACTED] [REDACTED] and the Petitioner "used resource provisioning and task scheduling to create two new approaches to [REDACTED]. Although [REDACTED] described the Petitioner's method as "extremely effective," he did not provide specific examples indicating that the Petitioner's work has been utilized in the field or otherwise constitutes a record of success in the field beyond being cited by others in their published works, discussed later.

Likewise [REDACTED] indicated that the Petitioner "applied stochastic computing techniques to a major type of deep learning system [REDACTED] and "found that it achieved [REDACTED]." [REDACTED], however, does not offer examples of how the Petitioner's research and other findings have been implemented, utilized, or applauded in the field beyond having "been widely cited by his peers."

Similarly, [REDACTED] described the Petitioner's project in [REDACTED] [REDACTED] and opined that groups have "benefited greatly from [the Petitioner's] research and there are numerous other groups who have also used his work to their advantage." While he provided two articles that subsequently cited to this research, [REDACTED] did not further elaborate and explain how this work has affected the industry or otherwise represents a level of success or progress rendering the Petitioner well positioned to advance his proposed endeavor.

The record also includes 12 partial articles that cited to the Petitioner's co-authored work. Based on these excerpts, the authors reference the Petitioner's research as background material for their own findings, and these limited articles do not represent a level of his success in the field. For instance, in the paper, entitled [REDACTED] (*IEEE Transactions on Computer-Aided Design of Integrated Circuits and Systems*), the authors identified the Petitioner's co-authored paper, [REDACTED] as one of five that reported interest in using [REDACTED].⁶ This article, however, does not distinguish or highlight the Petitioner's work from the over 100 other papers referenced in the article.⁷

Similarly, in the article, entitled [REDACTED] (*International Journal of Engineering and Technology*), the authors indicated the Petitioner's paper, [REDACTED] as one of 17 other studies that identified [REDACTED] in cloud. This article, however, does not differentiate the Petitioner's paper from the 97 other papers referenced in the article.

⁵ While we discuss a sampling of these letters, we have reviewed and considered each one.

⁶ Although we discuss representative sample articles here, we have reviewed and considered each one.

⁷ The partial article does not show the complete number of references.

Regarding the Petitioner's overall citation record, as indicated above, several of his reference papers commented on his citation numbers. For example, "[the Petitioner] has been widely cited by his peers" [redacted], and "[the Petitioner's] published work has attracted a large amount of attention from other scientists" and "[t]hese citations mean that other scientists have used his results in their own work and discussed his studies, showing widespread recognition of the significance of his work" [redacted]. The record also includes information from Google Scholar indicating that his highest cited article published in *ASPLOS '17* garnered 68 citations with his remaining published works receiving 27 or less. The Petitioner did not specify how many citations for each of these individual articles were self-citations by him or his coauthors.⁸

Furthermore, the Petitioner provided data from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for the computer science field. The Petitioner claimed that his various published works ranked among the "top 1%," "top 10%," and "top 20%" based on the number of citations they have received since publication. The Petitioner did not indicate whether he factored in any self-citations in determining these percentile rankings. In addition, the Clarivate Analytics citation data is from February 11, 2019, and therefore does not capture citations that occurred after early 2019, while the Petitioner's Google Scholar citation report is dated June 11, 2019.⁹ Because the Clarivate Analytics data is not contemporaneous with the Petitioner's Google Scholar data, he has not shown that the former provides a proper analysis of his citation record. Moreover, the documentation from Clarivate Analytics states that "[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution."

Regardless, the Petitioner has not demonstrated that the number of citations received by his published articles and conference papers reflect a level of interest in his work from relevant parties sufficient to meet *Dhanasar*'s second prong. In fact, [redacted] indicated that it "is especially noteworthy when one considers the fast-paced nature of the field of computer science, which places much less of an emphasis on citation than many other scientific disciplines."

The Petitioner also provided a screenshot from Google Scholar highlighting the h5-index and h5-median for *IEEE Transactions on Computer-Aided Design of Integrated Circuits and Systems*. That a publication bears a high journal ranking or impact factor is reflective of the publication's overall citation rate. It does not, however, show the influence of any particular author or otherwise demonstrate how an individual's research represents a record of success in the field.

In addition, the Petitioner submitted "Acknowledgements" sections of his published articles noting that the work was supported by various entities, such as the U.S. National Science Foundation (NSC) and the Defense Advanced Research Projects Agency (DARPA). Further, the reference letter from [redacted] claimed that the Petitioner's "work has been supported by such diverse groups as [NSC], [DARPA], the Natural Science Foundation of China, and the European Regional Development Fund," and "[t]hese agencies all have extremely diverse goals ranging from economic and social

⁸ The Petitioner only provided partial copies of his articles without the reference pages.

⁹ A webpage accompanying the Clarivate Analytics information states that its citation "data is updated six times a year" (every two months).

cohesion in the European Union to improving the national security of the United States.” The record, however, does not include copies of the research grants. In *Dhanasar*, the record established that the petitioner “initiated” or was “the primary award contact on several funded grant proposals” and that he was “the only listed researcher on many of the grants.” *Id.* at 893, n.11. Here, the record does not show that the Petitioner was mainly responsible for obtaining funding for the research projects.

As it relates to his peer review activity, the Petitioner provided documentation evidencing his review of manuscripts for journals, such as *IEEE Transactions on Neural Networks and Learning Systems* and *Transactions on Computer-Aided Design of Integrated Circuits and Systems*, as well as papers for conferences, such as the Design Automation Conference and the [] International Conference on Advanced Electronic Science and Technology. The Petitioner, however, did not explain the significance of his review experience or demonstrate that his participation in the widespread peer review process represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance his endeavor.

The record demonstrates that the Petitioner has conducted and published research while at the University [] but he has not shown that this work renders him well positioned to advance his proposed research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual’s progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that his published work has served as an impetus for progress in the field or that it has generated substantial positive discourse in the industry. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing research relating to computer science or software engineering.

As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework. As such, we withdraw the Director’s finding for the second prong. Accordingly, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.